

STATE OF MICHIGAN
COURT OF APPEALS

BRUCE MAY,

Plaintiff-Appellant,

v

CITY OF WARREN,

Defendant-Appellee.

UNPUBLISHED

January 23, 2007

No. 271627

Macomb Circuit Court

LC No. 04-002873-CL

Before: Donofrio, P.J., and Bandstra and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition in favor of defendant in this collective bargaining agreement case. Because the trial court properly granted defendant's second motion for summary disposition and did not abuse its discretion in denying plaintiff's motion to strike defendant's supplementary brief, we affirm.

Plaintiff, a firefighter employed by defendant, was placed on active duty status with the Army National Guard sometime in October 2003. From October 1, 2003, to March 31, 2004, plaintiff utilized a provision of the collective bargaining agreement ("CBA") allowing union members to voluntarily trade work or leave days pending approval of the company officer in charge ("trading of days provision"). In April 2004, defendant determined that plaintiff's use of the trading of days provision was improper because he was paying for days, i.e., using the trading of days provision and paying a co-employee to work in his absence. Defendant then suspended the trading of days provision under the CBA and plaintiff's union filed a grievance on plaintiff's behalf. Plaintiff's union and defendant settled the grievance ("settlement agreement") before submitting it to binding arbitration under the CBA. Plaintiff disputed defendant's interpretation of the settlement agreement and filed suit requesting that the trial court enter an order requiring defendant to pay plaintiff full compensation and benefits he earned in his position as a firefighter while using the trading of days provision from October 1, 2003, to March 31, 2004. Subsequently, the trial court granted defendant's second motion for summary disposition and this appeal followed.

This Court reviews de novo a trial court's grant of a motion for summary disposition. *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). In reviewing a motion under MCR 2.116(C)(10),¹ this Court must consider the pleadings, admissions, affidavits, and other relevant documentary evidence submitted in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). If no genuine issue of material fact is established, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West, supra*.

MCR 2.116(C)(7) provides grounds for summary disposition where the claim is barred by an agreement to arbitrate. "The grant or denial of summary disposition as well as the existence and enforceability of an arbitration agreement are questions of law for a court to determine de novo." *Michelson v Voison*, 254 Mich App 691, 693-694; 658 NW2d 188 (2003). When reviewing a motion under MCR 2.116(C)(7) on the ground that a claim is barred because of an agreement to arbitrate, this Courts accepts the plaintiff's well-pleaded allegations as true and construe them in favor of the nonmoving party. *Id.* at 694. This Court must also consider the pleadings, affidavits, depositions, admissions and documentary evidence filed or submitted by the parties to determine whether a genuine issue of material fact exists. MCR 2.116(G)(5); *Watts v Polaczyk*, 242 Mich App 600, 603; 619 NW2d 714 (2000).

Additionally, the interpretation of contractual language is an issue of law, which this Court reviews de novo. *Morley v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998). "The cardinal rule in the interpretation of contracts is to ascertain the intention of the parties." *McIntosh v Groomes*, 227 Mich 215, 218; 198 NW 954 (1924).

Plaintiff argues that the settlement agreement expressly requires that defendant pay plaintiff full compensation and benefits he obtained from October 1, 2003, to March 31, 2004. Further, plaintiff contends that the trial court erred in concluding that he had failed to exhaust his remedies under the CBA. Plaintiff argues that the equitable powers of the trial court are his sole remedy to enforce the terms of the settlement agreement because he is barred from pursuing a new grievance under the CBA.

Plaintiff's union, on behalf of plaintiff, entered into a voluntary settlement agreement in lieu of continuing with binding arbitration of the grievance. The settlement agreement provides, in pertinent part:

The parties agree that an actual trade of work or leave days between two bargaining unit members must take place. A trade requires approval of the Fire

¹ The trial court did not specify whether it relied on MCR 2.116(C)(8) or MCR 2.116(C)(10) when it granted defendant's second motion for summary disposition. However, since it considered matters outside the pleadings, we will construe the motion as having been granted pursuant to MCR 2.116(C)(10). *Driver v Hanley (After Remand)*, 226 Mich App 558, 562; 575 NW2d 31 (1997).

Commissioner or his designee. Any form of payment or other form of compensation is not permitted. A member will not be eligible to trade days if it will result in working more than 72 consecutive hours. If a member works 72 consecutive hours, they will be eligible for overtime.

No action will be taken by the City against any member of the bargaining unit for participating in the trading of days prior to this agreement.

Fire Fighter May shall have an opportunity to provide the City with his military pay record. If it is determined from such records the City owes money consistent with the City Council Resolution regarding pay for persons on military leave, May will be paid in full. He must provide appropriate documentation within thirty (30) days after execution of this agreement or he will have waived his rights to such compensation, if any.

Upon execution of this Agreement the Union will withdraw with prejudice Grievance Nos. G-05-07-04-01 (Policy) G-04-13-04-1 (May). [Emphasis added.]

“An arbitration agreement (whether common-law or statutory) is a contract by which the parties forgo their rights to proceed in civil court in lieu of submitting their dispute to a panel of arbitrators.” *City of Ferndale v Florence Cement Co*, 269 Mich App 452, 461; 712 NW2d 522 (2006) (citations omitted). Generally, an arbitrator issues an award in writing after an arbitration between the parties. *Rembert v Ryan’s Family Steak Houses, Inc*, 235 Mich App 118, 165; 596 NW2d 208 (1999). The award contains findings of facts and conclusions of law. *Id.* This Court has recognized that these requirements are necessary to aid in meaningful review of the arbitration award. *Id.* To be enforceable, an arbitration award must be “final, complete, and coextensive with the terms of the submission.” *Beattie v Autostyle Plastics, Inc*, 217 Mich App 572, 579; 552 NW2d 181 (1996) (internal quotations and citations omitted).

Furthermore, a settlement agreement is a contract and should be treated as such. See *Plamondon v Plamondon*, 230 Mich App 54, 56; 583 NW2d 245 (1998). As this Court noted in *Northern Michigan Educ Ass’n v Board of Educ of the Cheboygan Area Schools*, 126 Mich App 781, 787-788; 337 NW2d 923 (1983):

The law favors arbitration because it provides a simpler, less costly form of resolving disputes and avoids protracted litigation. It makes little sense to suggest that parties who have agreed to submit particular types of disputes to arbitration are no longer free to resolve portions of such disputes prior to arbitration by the even less-costly method of dispute resolution of settlement or that they are not bound by settlement agreements so entered. On the contrary, compromises of pending controversies have long been the most favored method of dispute resolution. [Internal citations omitted.]

Although the settlement agreement in the present case was entered into before the parties arbitrated the grievance under the CBA, this Court will look to both the CBA and the settlement agreement in resolving the issues raised by plaintiff on appeal.

“[O]ur Legislature and our courts have strongly endorsed arbitration as an inexpensive and expeditious alternative to litigation.” *Rembert, supra* at 133. Accordingly, “any doubts about the arbitrability of an issue should be resolved in favor of arbitration.” *DeCaminada v Coopers & Lybrand, LLP*, 232 Mich App 492, 499; 591 NW2d 364 (1998). Furthermore, courts may engage in only limited review of arbitration awards. In fact, “a court may not review an arbitrator’s factual findings or decision on the merits.” *Port Huron Area School Dist v Port Huron Ed Ass’n*, 426 Mich 143, 150; 393 NW2d 811 (1986). However, a trial court has the authority and obligation to enforce an arbitration award including the authority to determine the meaning of an award. *Staniszewski v Grand Rapids Packaging Corp*, 125 Mich App 97, 99; 336 NW2d 10 (1983). In that regard, a court may interpret the award and fully effectuate it. *Id.*

Both parties rely on *SEIU, Local 466M v City of Saginaw*, 263 Mich App 656; 689 NW2d 521 (2004), in support of their arguments on appeal. In *SEIU*, the plaintiff-employee filed a grievance under a collective bargaining agreement challenging the defendant-city’s decision to hire an outside candidate for a position as a tax specialist. *Id.* at 657. The plaintiff alleged in the grievance that the hiring violated the collective bargaining agreement’s provision requiring the defendant to hire the plaintiff based on her senior position as a tax auditor. *Id.* The grievance was submitted to arbitration and the defendant was ordered to hire the plaintiff as a tax specialist and the plaintiff was awarded the difference in pay between a tax auditor and a tax specialist for the time period the outside candidate was employed with the defendant. *Id.* at 657-658. Subsequently, the defendant reorganized the plaintiff’s department and rehired the outside candidate for a newly created position. The reorganization essentially assigned the plaintiff the same duties that she performed in her former position as a tax auditor and awarded the outside candidate a new position with the same duties as a tax specialist. *Id.* at 658. The plaintiff then filed a complaint for specific performance and declaratory judgment and the defendant moved for summary disposition. *Id.* The trial court granted the defendant’s motion, reasoning that it had no jurisdiction to enforce the award because the plaintiff was required to file a second grievance to challenge the defendant’s actions. *Id.* at 658-659. This Court affirmed, stating that:

Because Michigan case law is clear that an arbitrator is the sole fact-finder in arbitration, the trial court is without jurisdiction to review the facts presented at arbitration or assess any facts concerning the purported reorganization that arose after arbitration. The trial court also correctly determined that it did not have jurisdiction to review the CBA in order to determine whether defendant’s reorganization was in compliance therewith. Further, if the trial court ordered defendant to revert to the prereorganization duties of specialist, it would be fashioning a new remedy beyond that awarded by the arbitrator. *The parties indisputedly [sic] entered into a CBA that provided that all grievances would be arbitrated. The issue whether defendant’s postarbitration actions were permissible under the CBA, or were a mere ruse to avoid compliance with the arbitration award, is a matter that can only be addressed by way of a new grievance and arbitration.* [*Id.* at 661-662 (emphasis added).]

Relying on *Armco Employees Independent Federation, Inc. v Armco Steel Co*, 65 F3d 492, 494-498 (CA 6, 1995), the *SEIU* Court noted that the trial court did not have jurisdiction to grant relief because the

plaintiff asked the trial court to evaluate an alleged violation that took place after the arbitral award was issued and that was distinct, though arguably arising, from the act upon which the original grievance was based. Thus, for the trial court to “enforce” the award as plaintiff requested, the trial court would have had to perform fact-finding and fashion a new award. [*SEIU, supra* at 663-664.]

In the present case, both parties do not dispute on appeal that their actions are governed by the CBA. A review of the record shows that the CBA provides a four-step grievance procedure that includes binding arbitration as its final step. After the settlement agreement was entered, plaintiff filed suit requesting that the trial court order defendant to pay plaintiff full compensation and benefits he obtained from October 1, 2003, to March 31, 2004. Because defendant failed to do so, plaintiff argued that defendant breached the terms of the settlement agreement. Plaintiff specifically cites a portion of paragraph four in support of his contention, which provides that “No action will be taken by the City against any member of the bargaining unit for participating in the trading of days prior to this agreement.”

We conclude that the trial court properly refrained from deciding the issue because the alleged violation, i.e., withholding plaintiff’s compensation, occurred after the settlement agreement was entered into and was distinct from the act upon which the initial grievance was based. See *SEIU, supra* at 663-664. The initial grievance only addressed the propriety of the general order rescinding the trading of days provision. Further, the settlement agreement does not clearly and specifically require that defendant pay plaintiff full compensation and benefits for use of the trading of days provision from October 1, 2003, to March 31, 2004. Indeed, the opposite conclusion is true. Specifically, based on the record below, there is no question of fact that: (1) the settlement agreement and the CBA allow plaintiff to be reimbursed for the difference in his military pay and his firefighter pay from October 1, 2003, to March 31, 2004, and plaintiff admitted below that his military pay is greater; and (2) plaintiff waived his right to compensation under paragraph four of the settlement agreement by failing to submit military pay records within 30 days of the settlement agreement. Regardless, the trial court was not required to reach this conclusion and interpret the settlement agreement to determine whether defendant’s actions after the settlement agreement were proper. *SEIU, supra* at 661-662. It would have been improper for the trial court to conduct additional fact-finding, interpret the settlement agreement and the CBA and fashion a new award. *Id.* The trial court lacked jurisdiction to resolve this claim, which would require interpretation of the settlement agreement and the CBA rather than merely enforcing a clear and specific award. Instead, plaintiff should have filed a new grievance under the CBA to challenge the interpretation and enforcement of the settlement agreement. See *City of Ferndale, supra* at 461, citing *Detroit Automobile Inter-Ins Exch v Sanford*, 141 Mich App 820, 825-826; 369 NW2d 239 (1985), (“a party to an arbitration award may not proceed in circuit court with a complaint for declaratory relief for the purpose of relitigating the same issues decided by arbitration”).

Contrary to plaintiff’s argument on appeal, filing a second grievance challenging the interpretation and application of the settlement agreement would not be futile. Generally, plaintiffs are “obliged to exhaust their remedies under the collective bargaining agreement before proceeding to circuit court.” *AFSCME v Highland Park Bd of Ed*, 214 Mich App 182, 187; 542 NW2d 333 (1995). “The courts require the exhaustion of union remedies in order to advance the policy of encouraging a nonjudicial resolution of labor disputes.” *Id.*, citing *Clayton v Auto*

Workers, 451 US 679; 101 S Ct 2088; 68 L Ed 2d 538 (1981). It follows that plaintiff, who is a party to the settlement agreement entered into before binding arbitration, may not proceed in circuit court with a complaint for declaratory relief until he has exhausted the dispute resolution procedures under the CBA challenging the settlement agreement.

As we mentioned above, the CBA provides a grievance procedure to address the allegations contained in plaintiff's amended complaint. Specifically, a grievance is defined as "an employee complaint as to the interpretation and application of the provisions of the [CBA], or a violation of common health or safety standards, or discharge, or discipline without just cause." Plaintiff seeks to challenge the interpretation and application of the terms of the settlement agreement, which is a product of the CBA. The rights of plaintiff to his employment with defendant and the provisions of the settlement agreement are both governed by and exist because of the CBA. See *Jones v General Motors Corp*, 939 F2d 380, 383 (CA 6, 1991) (noting that "if the asserted right [under the settlement agreement] itself is not directly created by the CBA, it would be the product of an individual contract for employment, which is itself forbidden by the CBA.") Generally, courts "should assume that the administrative process will, if given a chance, discover and correct its own errors." *Citizens for Common Sense in Government v Attorney General*, 243 Mich App 43, 52; 620 NW2d 546 (2000) (internal quotations and citations omitted). Plaintiff's argument regarding the futility of filing a second grievance is without merit, and the trial court properly granted defendant's second motion for summary disposition.

Plaintiff also argues that the trial court erred in denying his motion to strike, pursuant to MCR 2.115(B), defendant's supplemental brief in support of its second motion for summary disposition. "This Court reviews a trial court's decision regarding a motion to strike a pleading pursuant to MCR 2.115 for an abuse of discretion." *Belle Isle Grill Corp v City of Detroit*, 256 Mich App 463, 469; 666 NW2d 271 (2003). MCR 2.115(B) provides: "[o]n motion by a party or on the court's own initiative, the court may strike from a pleading redundant, immaterial, impertinent, scandalous, or indecent matter, or may strike all or part of a pleading not drawn in conformity with these rules." Pursuant to MCR 2.110(A), a supplementary brief is not defined as a pleading. Hence, MCR 2.115(B) did not grant the trial court the authority to strike defendant's supplementary brief.

Nonetheless, a review of defendant's supplementary brief submitted in the trial court does not reveal any "redundant, immaterial, impertinent, scandalous, or indecent matter." MCR 2.115(B). Furthermore, plaintiff failed to show how defendant's supplementary brief failed to conform to the Michigan Rules of Court. In its supplementary brief, defendant solely relies on *Wayne Co Sheriff's Local 502 v Co of Wayne*, unpublished opinion per curiam of the Court of Appeals, issued April 25, 2006 (Docket No. 259327), where this Court addressed an issue regarding whether the circuit court lacked jurisdiction to resolve the claim of a plaintiff seeking enforcement of an arbitration award. The unpublished opinion, which this Court issued after defendant filed its second motion for summary disposition, was relevant to the issues raised by plaintiff. Regardless, as the trial court pointed out, defendant's supplementary brief was received after the trial court entered its order granting defendant's second motion for summary disposition. Thus, it was not considered by the trial court in deciding defendant's second motion

for summary disposition. The trial court did not abuse its discretion when it concluded that the issue was moot and denied plaintiff's motion to strike defendant's pleading.

Affirmed.

/s/ Pat M. Donofrio
/s/ Richard A. Bandstra
/s/ Brian K. Zahra